

03/29/2006 WED 14:04 FAX

002/007

Application No. 09/753,656  
Reply to Office Action dated: 12/15/2005

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MAR 29 2006

**REMARKS**

Applicant hereby elects the "second embodiment utilizing a sensor", and the sub-embodiment shown in Figure 2. This is claims 1, 5, 7, 8, 10-16, 23-49 and 99.

Respectfully submitted,

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Date: March 29, 2006

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/753,656	01/04/2001	Peter Forsell	2333-69	1846

27777 7596 12/15/2005  
PHILIP S. JOHNSON  
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DEC 20 2005

EXAMINER	
GILBERT, SAMUEL G	
ART UNIT	PAPER NUMBER
3735	

DATE MAILED: 12/15/2005

J&J PAT. DKT. SECTION

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/753,656	FORSELL, PETER	
	Examiner Samuel G. Gilbert	Art Unit 3735	
<p align="center"><i>— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —</i></p> <p><b>Period For Reply</b></p> <p>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHERVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.</p> <ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(e).</li> </ul>			
<p><b>Status</b></p> <p>1)<input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>09 September 2005</u>.</p> <p>2a)<input type="checkbox"/> This action is FINAL.      2b)<input checked="" type="checkbox"/> This action is non-final.</p> <p>3)<input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11, 453 O.G. 213.</p>			
<p><b>Disposition of Claims</b></p> <p>4)<input checked="" type="checkbox"/> Claim(s) <u>1,5,7,8,10-57,59,66,68-70 and 99</u> is/are pending in the application.</p> <p>4a) Of the above claim(s) _____ is/are withdrawn from consideration.</p> <p>5)<input type="checkbox"/> Claim(s) _____ is/are allowed.</p> <p>6)<input type="checkbox"/> Claim(s) _____ is/are rejected.</p> <p>7)<input type="checkbox"/> Claim(s) _____ is/are objected to.</p> <p>8)<input checked="" type="checkbox"/> Claim(s) <u>1,5,7-57,59,66 and 68-70</u> are subject to restriction and/or election requirement.</p>			
<p><b>Application Papers</b></p> <p>9)<input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10)<input type="checkbox"/> The drawing(s) filed on _____ is/are: a)<input type="checkbox"/> accepted or b)<input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).</p> <p>11)<input type="checkbox"/> The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.</p>			
<p><b>Priority under 35 U.S.C. § 119</b></p> <p>12)<input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</p> <p>a)<input type="checkbox"/> All    b)<input type="checkbox"/> Some * c)<input type="checkbox"/> None of:</p> <p>1.<input type="checkbox"/> Certified copies of the priority documents have been received.</p> <p>2.<input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.</p> <p>3.<input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</p> <p>* See the attached detailed Office action for a list of the certified copies not received.</p>			
<p><b>Attachment(s)</b></p> <p>1)<input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3)<input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.</p> <p>4)<input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.</p> <p>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6)<input type="checkbox"/> Other: _____.</p>			

Application/Control Number: 09/753,656  
Art Unit: 3735

Page 2

*Election/Restrictions*

Applicant's election without traverse of "the second embodiment utilizing a sensor", Claims 1, 5, 7, 8, 10-49, and 99 in the reply filed on 9/9/2005 is acknowledged. However the application contains claims directed to two different embodiments including a sensor, the first is Figure 2 and the second is Figure 3. The response of 9/9/2005 appears to have elected both embodiments including a sensor. Therefore, the applicant is now required to elect one embodiment including a sensor, either Figure 2 or Figure 3 and provide a listing of all claims readable thereon, including any claims subsequently added. The election requirement from the office action of 7/1/2005 is repeated below.

This application contains claims directed to the following patentably distinct species of the claimed invention: the first embodiment utilizes a timer and the second embodiment utilizes a sensor to control the restriction of food flow. Further, there are two distinct species shown in Figures 2 and 3.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims

Application/Control Number: 09/753,656  
Art Unit: 3735

Page 3

readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

A telephone call was made to Dean Garner on 6/27/2005 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Application/Control Number: 09/753,656  
Art Unit: 3735

Page 4

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on Monday-Friday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ali Imam can be reached on 571-272-4737. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Samuel G. Gilbert  
Primary Examiner  
Art Unit 3735

sgg